

Internal Revenue Service

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Date: June 11, 2007

LEGEND

X =

Y =

D1 =

D2 =

D3 =

D4 =

D5 =

D6 =

State =

Trust =

Dear :

This responds to a letter dated February 16, 2007, submitted on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted, X is a corporation organized under the laws of State on D1. On D2, X amended its Articles of Incorporation and created three classes of stock, Class A, Class B, and Preferred Stock. X filed a timely election to be treated as an S corporation effective D3.

After Y, a shareholder of X, passed away, Y's stock was transferred to Trust on D4. Trust filed a timely election to be treated as a Qualified Subchapter S Trust (QSST) under § 1361(d)(2). In D5, X's corporate documents were reviewed and it was discovered that X's Articles of Incorporation had not been amended to remove the provisions creating three classes of stock. In D6, X amended its Articles of Incorporation to remove the provisions.

X represents that it has operated as an S corporation since D3 and that all of its shareholders have reported their shares of X's income, loss, and deductions on their respective tax returns in a manner consistent with that treatment.

LAW AND ANALYSIS

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation that is not an ineligible corporation and that does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

Section 1.1361-1(l)(1) of the Income Tax Regulations provides that a corporation that has more than one class of stock does not qualify as a small business corporation. A corporation is treated as having only one class of stock if all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds.

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation was not effective for the taxable year for which made by reason of a failure to meet the requirements of § 1361(b), (2) the Secretary determines that the circumstances resulting in the ineffectiveness were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness, steps were taken so that the corporation is a small business corporation, and (4) the corporation for which the election was made and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f) agrees to make any adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect

to that period, then, notwithstanding the circumstances resulting in the ineffectiveness, the corporation will be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the information submitted and the representations made by X, we conclude that X's election to be treated as an S corporation was not effective for the taxable year for which made because it had more than one class of stock. We further conclude that the election was an inadvertent invalid election under § 1362(f). Therefore, X will be treated as an S corporation beginning D3, and thereafter, unless X's S election otherwise terminates under § 1362(d). This ruling is contingent on X and its shareholders treating X as an S corporation for the period beginning D3 and thereafter.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed concerning whether X or Trust is otherwise eligible to be treated as an S corporation or a QSST, respectively.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Dianna K. Miosi
Chief, Branch 1
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy of this letter for § 6110 purposes